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September 10, 2018

VIA ECF

The Honorable Vera M. Scanlon
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

JONATHAN L. MARKS
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Re: *State Farm Mut. Auto. Ins. Co. v. 21st Century Pharmacy, Inc., et al.,*
Case No. 1:17-cv-5845-MKB-VMS – Motion to Compel Non-Parties

Dear Judge Scanlon:

Plaintiff State Farm Mutual Automobile Insurance Company (“SFMA”) respectfully moves this Court to compel non-parties DGRD Marketing Inc. (“DGRD”), F&A Enterprise of USA, Inc. (“F&A”), JR Gateways, Inc. (“JR Gateways”), K Line Media Inc. (“K Line”), New Business Funding Inc. (“NBFI”), PBSM&C LLC (“PBSM&C”), Prof Med Network Services Inc. (“Prof Med”), TAR Group Inc. (“TAR”), and TBM Solution Inc. (“TBM”) (collectively, the “Non-Parties”) to produce documents responsive to SFMA’s subpoenas. *See* Exs. A–I. The subpoenas request documents reflecting (1) communications, payments, and business relationships with defendants in this action and certain identified non-parties, (2) certain financial records, (3) employment records, (4) documents reflecting ownership, and (5) documents reflecting services performed for defendant 21st Century Pharmacy Inc. (“21st Century”) and the solicitation or referral of patients. To date, the Non-Parties have failed to respond to the subpoenas.

Relevant Background. This action arises out of the provision of medically unnecessary compounded medications (“Compounded Products”) to more than 500 patients injured in automobile accidents. These Compounded Products consist of topical creams in 10 ounce tubes for which 21st Century charges as much as almost \$9,000 per tube. Dkt. 1 ¶ 4. There is no support that the Compounded Products are effective for the conditions for which they are prescribed, that they can penetrate the skin to have an effect, that they contain ingredients that are compatible with each other, or that they are stable over time. *Id.* ¶¶ 36–49. Additionally, since the products were mass produced rather than individually tailored for specific patients, they were not exempt from U.S. Food and Drug Administration (“FDA”) approval and represent an end-run around the FDA approval process. *Id.* ¶¶ 32–34, 50–51. To date, SFMA has paid 21st Century more than \$1.6 million for its Compounded Products. *Id.* ¶ 8.

Critical to the scheme’s success are doctors willing to write prescriptions for the Compounded Products and to support the medications’ purported medical necessity. As the complaint alleges, prescriptions are written on forms designed and provided by 21st Century, and doctors sign form letters of medical necessity almost certainly created by 21st Century. *Id.* ¶¶ 53–66. The complaint further asserts that there is no legitimate reason for doctors to prescribe 21st Century’s

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Compounded Products given these form documents, the lack of evidence supporting the therapeutic benefits of the Compounded Products, the availability of many far less expensive, FDA-approved alternatives, and the exorbitant charges for the creams. *Id.* ¶ 7. To the extent prescriptions resulted from a financial arrangement or kickback, 21st Century would be ineligible to collect benefits. *Id.* ¶¶ 31, 69, 77.

To generate prescriptions for Compounded Products, 21st Century and its owner, Albert Alishayev (“Alishayev”), used and paid significant sums to numerous marketers and consultants that, among other things, provided form prescriptions to doctors and collected them after they had been completed and signed. *Id.* ¶¶ 13, 68.

The Marketers and Consultants. A review of 21st Century’s bank records reflect [REDACTED] [REDACTED]. Moreover, in 2013 and 2014 alone, 21st Century [REDACTED] [REDACTED].¹ SFMA has subpoenaed relevant documents from the marketing and consulting companies and from 21st Century. To date, no records have been produced reflecting any services Non-Party marketers and consultants performed for 21st Century.

Documents produced in discovery appear to show that 21st Century paid marketers and consultants to direct or incentivize doctors to write prescriptions for its products. For example, 21st Century [REDACTED] to ten “marketing” and “consulting” companies believed to be owned or controlled by Peter Khaim.² Documents produced to date show that Khaim, through several of his companies, had financial agreements with defendant Dr. Azu Ajudua for purported “marketing” services and office space at which Ajudua operated his clinic Starrett City Medical, PC (“Starrett City”). One of the doctors that Ajudua employed at Starrett City, Dr. Andre Duhamel, signed a sworn affidavit in a related case stating that a person named “Peter” directed activities at clinics where Dr. Duhamel worked — including Starrett City — and required doctors at those clinics to prescribe 21st Century’s products. Discovery has also revealed that Starrett City had an agreement with defendant Dr. Vincentiu Popa’s employer for the use of space at the property where Starrett City operated. It thus appears that Drs. Ajudua and Popa issued prescriptions for 21st Century products while treating patients at the same Khaim-controlled property and that Khaim and entities under his control had financial arrangements with clinics, controlled the physical space where clinics operated, received significant funds from clinics, and required doctors to prescribe 21st Century products.

As reflected below, the marketing and consulting companies that are the subject of this motion — DGRD, JR Gateways, K Line, PBSM&C, Prof Med, TAR, and TBM — have significant financial ties to 21st Century.

¹ [REDACTED]

² 21st Century, Alishayev, and Khaim are financially intertwined. 21st Century’s own counsel has represented in Court that Khaim loaned Alishayev a considerable amount of money to start 21st Century, which Alishayev still is paying off. See, e.g., Dkt. 57 at 1910.

Non-Party						Owner/Official
DGRD						Daniel Dmitrovic
JR Gateways						Unknown
K Line						Unknown
PBSM&C						Unknown
Prof Med						Unknown
TAR						Tariel Begiyev
TBM						Tariel Begiyev

One of the companies, DGRD, is owned by Daniel Dmitrovic, a 21st Century employee who works in sales and marketing. Several of the companies also appear to have close ties with Khaim. For example, the owner of TAR and TBM, Tariel Begiyev, is a close business associate of Khaim. In fact, Anturio Marketing, which is owned by Khaim, paid TAR and TBM collectively hundreds of thousands of dollars. In addition, TBM operated at the same address at which two other Khaim-owned entities that received substantial sums from 21st Century were located — New Business Resources Group Inc. and K&L Consultants Inc.³ Neither 21st Century nor Anturio (nor any other party that has responded to discovery) has produced any documents reflecting services performed by any of the Non-Party marketers and consultants.

NBFI. NBFI appears to be a financing company to which 21st Century [REDACTED]

[REDACTED] However, one document produced by 21st Century indicates that NBFI only loaned 21st Century a little more than \$550,000. Like TAR and TBM, NBFI's owner is Tariel Begiyev, Khaim's business associate. NBFI was located at the same property as Khaim's management company, A&P Holding Group Inc. To date, 21st Century has produced no loan documents supporting the loan payments it made to NBFI or that explain the discrepancy between the loan amount identified by 21st Century and the payments made by 21st Century to NBFI. Further, discovery has shown that numerous other entities controlled by Alishayev or Khaim also made substantial payments to NBFI.

F&A. 21st Century [REDACTED]. 21st Century produced no documents reflecting any construction services performed for it by F&A. F&A is owned by Firuz Juraev, who received 1099 tax forms from [REDACTED] a Khaim-owned pharmacy, RX For You Corp, which itself has close financial ties to 21st Century and provides Compounded Products to SFMA insureds. Importantly, F&A and Juraev also received payments from one of Ajudua's medical clinics at issue in this action, as well as numerous other entities of interest, including Anturio (owned by Khaim), Express Billing & Collection Inc. (owned by Alishayev's wife), Personal Tech Inc. (owned by Alishayev's father), and AAA Wholesale Supply Inc. (owned by Khaim's brother, Arkadiy Khaimov).

³ On August 9, 2018, the Court ordered both New Business Resources and K&L Consultants to show cause why they should not be held in contempt for failing to respond to SFMA's subpoenas. Dkt. 62.

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Analysis. The subpoenas were properly served on all Non-Parties pursuant to Fed. R. Civ. P. 45. The table below identifies the date on which each Non-Party was served, the deadline by which each Non-Party was required to respond to the subpoena, and the date SFMA issued a letter advising each Non-Party that it had failed to respond timely to the subpoena. In each of those letters, SFMA advised the Non-Party of a new date by which it could comply to avoid motions practice, which is reflected below as the “New Return Date.”⁴

Non-Party	Date Served	Return Date	Letter Date	New Return Date
DGRD	7/12/2018	7/26/2018	7/27/2018	8/6/2018
F&A	7/12/2018	7/26/2018	7/27/2018	8/6/2018
K Line	7/31/2018	8/14/2018	8/15/2018	8/21/2018
JR Gateways	7/27/2018	8/10/2018	8/15/2018	8/21/2018
NBFI	7/12/2018	7/26/2018	7/27/2018	8/6/2018
PBSM&C	7/12/2018	7/26/2018	7/27/2018	8/6/2018
Prof Med	7/31/2018	8/14/2018	—	—
TAR	7/12/2018	7/26/2018	7/27/2018	8/6/2018
TBM	7/12/2018	7/26/2018	7/27/2018	8/6/2018

The subpoenas required the Non-Parties to respond within 14 days of service. They failed to do so. Indeed, to date, none has responded to the subpoenas. Since they have failed to respond, they have waived any and all objections. *See Carey v. Air Cargo Assocs., Inc.*, 2011 WL 446654, at *3 (S.D.N.Y. Feb. 7, 2011) (“The recipient of a subpoena may not ignore the subpoena and then later question its validity[.]”); *Sheet Metal Workers’ Nat'l Pension Fund v. Amodeo*, 2016 WL 3080807, at *7 (E.D.N.Y. May 27, 2016) (refusing to consider untimely objections that subpoena “was unduly burdensome, overbroad, or otherwise”).

Moreover, the subpoenas seek highly relevant information. Given the payments between 21st Century and the Non-Parties, the close business relationships the Non-Parties appear to have with 21st Century and/or Khaim, and the almost complete lack of any documents produced to date supporting the payments and relationships between 21st Century and the Non-Parties, it is critical that SFMA be permitted discovery into the relationships between the Non-Parties, 21st Century, and certain identified third parties; documents reflecting the Non-Parties’ ownership and who works for them; and certain financial records to explore further their relationships with 21st Century and related third parties.

Accordingly, SFMA respectfully requests that the Court enter an order directing DGRD, F&A, JR Gateways, K Line, NBFI, PBSM&C, Prof Med, TAR, and TBM to produce all documents responsive to SFMA’s subpoenas.

⁴ SFMA made numerous attempts to deliver to Prof Med the letter advising that it had failed to timely respond to the subpoena, but was unable to do so. Ex. G. Prof Med has not responded to the subpoena, and SFMA will serve this motion on Prof Med through its registered agent for service of process, the New York Department of State.

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Respectfully submitted,

/s/ Jonathan L. Marks

Jonathan L. Marks

Encls. (Exs. A–I)

cc: DGRD Marketing Inc. (via U.S. Priority Mail)
F&A Enterprise of USA, Inc. (via U.S. Priority Mail)
JR Gateways, Inc. (via U.S. Priority Mail)
K Line Media Inc. (via U.S. Priority Mail)
New Business Funding Inc. (via U.S. Priority Mail)
PBSM&C LLC (via U.S. Priority Mail)
Prof Med Network Services Inc. (via U.S. Priority Mail)
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